IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 27 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

COMMISSIONER OF INCOME TAX

Versus

LALJI GOKALDAS

Appearance:

MR AKIL QURESHI for MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 29/08/2000

ORAL JUDGEMENT

(per D.M. Dharmadhikari, C.J.)

The following question of law has been referred to us for answer in this Reference :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the income of the wife of the assessee was not liable to be included, by reason of section 64 of the I.T. Act, 1961, in the income of the assessee because the assessee was a partner in the firm of Ashwin Metals in his capacity as karta of the joint undivided Hindu family?"

The learned counsel appearing for the department submits that the question is squarely concluded in favour of the assessee by the Supreme Court in the case of C.I.T. v. Shri Om Prakash and others reported in (1996) 217 I.T.R. 785. In the decision of the Supreme Court it has been held,

"where a person is a partner in a partnership firm not in his individual capacity but as the karta of the Hindu undivided family, neither the income accruing to his wife on account of her being a partner in the same partnership firm nor the income accruing to his minor children on account of their being admitted to the benefits of such partnership firm, can be included in the total income of such person in his individual assessment or in the assessment of the Hindu undivided family."

In view of the above decision of the Supreme Court, the question posed is answered in favour of the assessee and against the revenue.

The Reference stands disposed of with no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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